



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Container Products Corporation

File: B-280603.4

Date: May 20, 1999

Joel Hughes for the protester.

Linda L. Shapiro, Esq., Steven E. Kellogg, Esq., Thompson Coburn, for Keco Industries, Inc., and James H. Roberts III, Esq., Manatt, Phelps & Phillips, for Gichner Shelter Systems, intervenors.

Samuel J. Galbo, Esq., and J. Page Turney, Esq., U.S. Marine Corps, for the agency.

C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Exclusion of the protester's proposal from the competitive range was reasonable where offeror failed to provide any schedule for first article and production testing, or to discuss its capabilities for conducting such tests, as required by the solicitation, but merely repeated solicitation requirements and stated that it would comply with them, resulting in a rating of "Unacceptable" for testing.

DECISION

Container Products Corporation (CPC) protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. M67854-98-R-3005, issued by the United States Marine Corps for cargo containers. The protester argues that the evaluation of its proposal was unreasonable.

We deny the protest.

On June 10, 1998, the agency issued the RFP for production and delivery of quadruple containers (QUADCONS), container racks, and horizontal connectors; the QUADCONS at issue here are an intermediate-size cargo container designed for shipment and transportation of military supplies and equipment. See Container Prods. Corp., B-280603.2, Nov. 4, 1998, 98-2 CPD ¶ 106 at 1. Section F-1 of the RFP advised offerors of the agency's intention to issue delivery orders for contract line item numbers (CLIN) 0001-0003, for first articles, at award. Section F-2 provided for

delivery of CLIN 0004, production lots of QUADCONS, every 30 days beginning 180 days after issuance of the first delivery order. RFP at B-2.

The solicitation provided for award of a fixed-price indefinite-delivery, indefinite-quantity contract to the lowest-priced, technically acceptable offeror. RFP at F-1, L-11, and M-1 to M-2. The agency advised offerors that it would not award a contract to an offeror with a rating lower than "Acceptable" for any evaluated factor or subfactor. RFP at M-2. Section M-3 established the evaluation factors and areas of consideration, as follows: Technical (three subfactors: weight, environmental, and compatibility/ interoperability); Management (two subfactors: manufacturing/ production capability and facilities, and testing); Past Performance (two subfactors: corporate experience and historical past performance); price; and Subcontracting Plan.

Section L of the RFP advised offerors how to prepare and submit their proposals. As relevant here, section L-6.2.2 for the subfactor of testing advised as follows:

The Offeror shall adequately describe the planning/schedule and execution of First Article Testing and Production Acceptance Testing set forth in [the purchase descriptions]. The offeror shall demonstrate an ability to successfully test the proposed CSC certified QUADCON container(s), and associated hardware in accordance with First Article and Production Acceptance Testing requirements set forth in the subject [purchase descriptions]

The agency received proposals on January 22, 1999. One firm had failed to provide a technical proposal; the agency referred the remaining proposals for a technical evaluation. Business Clearance Memorandum, Mar. 3, 1999, at 6. Evaluators rated CPC's management proposal "Marginal" for the first subfactor, "manufacturing/ production capability and facilities," and "Unacceptable" for the second subfactor, "testing." Evaluators found that CPC did not provide a schedule for first article or production acceptance testing but advised that it would plan such testing after award. The evaluators noted that CPC's proposal merely repeated and acknowledged requirements, without providing information on the protester's plans and capabilities for such testing.¹ Agency Request for Dismissal, encl. 3, QUADCON Technical Evaluation Discussion of Unacceptable Factors at 3. The proposal received only two

¹ CPC, in its proposal, stated that "CPC will plan, coordinate, and execute all of the required First Article Testing . . . for the . . . container, connector, and rack, as per the [RFP] requirements" CPC Proposal, Tab 3, Testing, Jan. 19, 1999, at 1st unnumbered page.

“Acceptable” ratings for the seven rated subfactors.² Because they considered the proposal unacceptable under the testing subfactor, evaluators rated the proposal “Unacceptable” overall. By letter dated March 5, 1999, the agency advised CPC that its proposal had been eliminated from the competitive range, and this protest followed.

CPC asserts that it submitted a proposal fully compliant with the RFP. The protester contends that it did not provide a testing schedule because the RFP did not contain firm dates for first article and production testing, and had no requirement, either explicit or implicit, for submitting a generic schedule--i.e., one stated in terms of days after award. Protester’s Letter, Mar. 18, 1999, at 4. In its protest, CPC acknowledges that it does not possess the specialized facilities necessary for all required testing, but indicates that it intends to subcontract this testing and that it has received quotations from various testing laboratories. *Id.* In essence, CPC argues that it promised to comply with RFP requirements and that this promise should have been sufficient for the evaluators to find its proposal technically acceptable. *Id.* In any event, the protester argues, it would be in the best interest of the government to hold discussions with CPC, in order to enhance competition. Protest, Mar. 8, 1999, at 2.

Initially, we note that, regardless of what the protester considers to be the agency’s best interest, FAR § 15.306(c) specifically allows an agency to establish a competitive range consisting of only the most highly rated proposals, and even, in certain circumstances, to further reduce the number of proposals considered “for purposes of efficiency.” In rating proposals, the agency must evaluate proposals and assess their relative qualities solely on the factors and subfactors stated in the solicitation; our Office reviews the agency’s evaluation of proposals and determination to exclude a proposal from the competitive range solely for reasonableness and consistency with the criteria and language of the solicitation. FAR § 15.305(a); SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 4; WP Photographic Servs., B-278897.4, May 12, 1998, 98-1 CPD ¶ 151 at 3. Here we find that the evaluation of CPC’s proposal and its elimination from the competitive range were reasonable and consistent with the solicitation.

Section L-6.2.2 of the RFP, quoted above, clearly requires an offeror to describe the planning and scheduling for first article and production acceptance testing in its proposal, and to demonstrate its ability to successfully test the containers. The RFP language required submission of the planning and scheduling information with proposals; the plans and schedule could not be developed after award as CPC contends. Each offeror was to describe its plans in its proposal, and, as noted by

² The protester also received “Marginal” ratings for Past Performance (corporate and historical) and for the compatibility/interoperability subfactor of Technical. Business Clearance Memorandum, Mar. 3, 1999, at 8.

CPC, such a schedule would of necessity be generic--i.e., in terms of days after award. CPC simply failed to meaningfully address this requirement in its proposal. A blanket offer of compliance with solicitation requirements, as submitted here by CPC, is not sufficient to meet a solicitation requirement for specific information that an agency deems necessary to establish the technical acceptability of a proposal. AMDATA, Inc., B-239216, Aug. 13, 1990, 90-2 CPD ¶ 123 at 5. Further, the protester acknowledges that it has no facilities for conducting many of the required tests. It attempts here, in this protest, for the first time, to provide information on its plans to subcontract testing, information that was not in the proposal submitted to the Marine Corps. Protester's Letter, Mar. 18, 1999, at 4; CPC Proposal, Tab 3, Testing, Jan. 19, 1999 (no mention of subcontracting). The protester presents no basis for finding the agency's evaluation and decision to exclude CPC's proposal from the competitive range to be unreasonable.

The protest is denied.

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